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JAN 17 2007

OFFICE OF PETITIONS

In re Application of :
Wayne E. Maska and Phyllis D. Maska :
Application No. 09/775,038 :
Filed: February 1, 2001 :
Title: Sexual Enhancement Device :

DECISION ON PETITION

This is decision on the petition under 37 CFR 1.181, filed November 21, 2006, to withdraw the holding of abandonment.

The above-identified application became abandoned for failure to file a timely response to the Restriction Requirement, mailed October 4, 2005, which set a period of one month or thirty days, whichever was longer, to reply. Extensions of time for response were available under 37 CFR 1.136(a). The above-identified application became abandoned on November 4, 2005. On September 28, 2006, the Office mailed a Notice of Abandonment, stating that the application became abandoned because applicant failed to file a timely and proper reply to the Restriction Requirement mailed on October 4, 2005. The Notice indicated that a reply was received in the USPTO on November 8, 2006, but that it did not constitute a proper reply, or bona fide attempt at a proper reply, to the outstanding Restriction Requirement. Specifically, the Notice indicated that applicant's response was received after the reply period and did not include a return date-stamped postcard receipt or an appropriate certificate of mailing.

37 CFR 1.33(b) states in pertinent part:

Amendments and other papers, except for written assertions pursuant to § 1.27(c)(2)(ii) of this part, filed in the application must be signed by:

- (1) A patent practitioner of record appointed in compliance with § 1.32(b);
- (2) A registered attorney or agent not of record who acts in a representative capacity under the provisions of § 1.34(a);
- (3) An assignee as provided for under § 3.71(b) of this chapter; or

(4) All of the applicants (§ 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with § 3.71 of this chapter.

The Office records do not indicate that applicants, Wayne E. Manska and Phyllis D. Manska, filed a power of attorney in the present application or assigned their interests. Therefore, all of the applicants must sign a petition in a joint application where the applicants have not given power of attorney to a registered attorney or agent. In the present case, only Wayne E. Manska signed the petition. There is no indication that Phyllis D. Manska gave power of attorney to applicant, Wayne E. Manska, to prosecute the application on her behalf. Accordingly, the petition is not properly signed by a person having authority to prosecute the application without the signature of the other applicant.

Therefore, the petition is **dismissed**. The Office will not render a decision on the present petition and the application will remain abandoned, until a "renewed" petition under 37 CFR 1.181 to withdraw the holding of abandonment is filed and signed by a person(s) having authority to prosecute the application (e.g., signed by both Wayne E. Manska and Phyllis D. Manska).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By fax: (571) 273-8300
 ATTN: Office of Petitions

By hand: Customer Service Window
 Randolph Building
 401 Dulany Street
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Telephone inquiries related to this decision should be directed to the undersigned at (571) 272-3211.



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